

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BLUEFIELD**

**CENTER FOR INDIVIDUAL
FREEDOM, INC.,**

Plaintiff,

v.

Civil Action No.: 1:08-cv-00190

**NATALIE E. TENNANT and
TIMOTHY D. BOGGESE,**

Defendants,

v.

**WEST VIRGINIANS FOR LIFE,
INC., and ZANE LAWHORN,**

Plaintiffs,

v.

Civil Action No.: 1:08-cv-01133

NATALIE E. TENNANT, *et al.*

**GARY A. COLLIAS, WILLIAM N.
RENZELLI, ROBERT RUPP and
CINDY SMITH, in their official
capacities as members of the West
Virginia State Election Commission,**

Defendants.

**STATE DEFENDANTS' RESPONSE TO CFIF'S
"NOTICE OF NEWLY DISCOVERED AUTHORITY"**

The Center for Individual Freedom (CFIF) has brought to this Court's attention a case in which the State Bar of Florida changed its position after being sued in federal court, thereby

discontinuing its prosecution of a specific violation of its advertising rule. It then moved to dismiss the federal claim as moot. *Harrell v. Florida Bar*, No. 09-11910, 2010 WL 2403344 (11th Cir. June 17, 2010). The 11th Circuit held that the Bar's change of heart appeared to be a manipulative attempt to deprive the district court of jurisdiction without repealing the offending rule, the Bar's action having been limited to the particular violation at issue, made in secret, without explanation, and at the request of the Bar's counsel. (*Id.*) Consequently, the plaintiff-attorney's as-applied challenge to the advertising rule was not moot.

CFIF provided this citation to downplay the State Election Commission's decision not to enforce the repealed provisions of West Virginia's Campaign Finance Laws.¹ However, unlike the Florida Bar's change of heart in *Harrell*, it is *not* the Election Commission's decision that is the mooted event. Rather, it is the action of the Legislature in amending or repealing the challenged provisions. In *Harrell*, the challenged rule was *not* changed. In this case, the challenged statutes *were* changed. In *Harrell*, the Bar's action was limited to the specific violation at issue in the lawsuit. In this case, the Commission's decision applies to *all* violations of the obsolete statutory provisions, whether at issue here or otherwise.

The *Harrell* case, thus, has no pertinence to the Defendants' Motion to Dismiss as Moot.

Respectfully submitted,

NATALIE E. TENNANT, SECRETARY OF STATE
OF WEST VIRGINIA and GARY A. COLLIAS,
WILLIAM N. RENZELLI, ROBERT RUPP and
CINDY SMITH, in their official capacities as
members of the West Virginia State Election
Commission

By Counsel,

¹Document [201-1](#).

DARRELL V. McGRAW, JR.
ATTORNEY GENERAL

/s/ Silas B. Taylor

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State of West Virginia, Gary A. Collias, William N. Renzelli,
Robert Rupp and Cindy Smith, in their official capacities
as members of the West Virginia State Election Commission*

CERTIFICATE OF SERVICE

I, Silas B. Taylor, Senior Deputy Attorney General, do hereby certify that on the 2nd day of August 2010, I electronically filed the foregoing “State Defendants’ Response to CFIF’s ‘Notice of Newly Discovered Authority’” with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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I hereby certify that I have mailed by United States Postal Service the document to the following non CM/ECF participants:

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/s/ Silas B. Taylor
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